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GENERAL COUNSEL'S OPINION NUMBER 58-2, DATED 23 JUNE 1958

The question as to whether an employee en route home from overseas on Agency "home leave" may take annual leave en route and how much is a matter for administrative discretion. The period of time spent in the U. S., or its territories and possessions should, in the light of all the facts, be reasonable and substantial.

TO CHIEF, PROJECTS AND PROCEDURES STAFF, OFFICE OF PERSONNEL

1. We have received your memorandum of 26 May referring to this Office a question by the Audit Staff concerning leave en route in connection with home leave. The original enquiry stated in part:

"Regulations require that personnel proceeding to ZI on home leave and returning to their overseas post must have a minimum of 23 days accrued annual leave in order to be eligible for reimbursement of home leave travel costs. The case in question concerns a staff employee who wishes to spend three calendar weeks (15 days) in ZI and approximately two weeks in Europe on her return trip en route to the Station. Specifically, is it necessary for a home leave traveler to spend the entire 23 days, required by regulation, in ZI or may part of the required days be used as leave en route?"

2. We find no reference in the regulations to a 23-day period. paragraph 5a(2)(c) states: "[The employee] must have to his credit, at the time his travel begins, sufficient accrued and accumulated annual leave to carry him in a pay status while in the United States for at least a 30-day period."

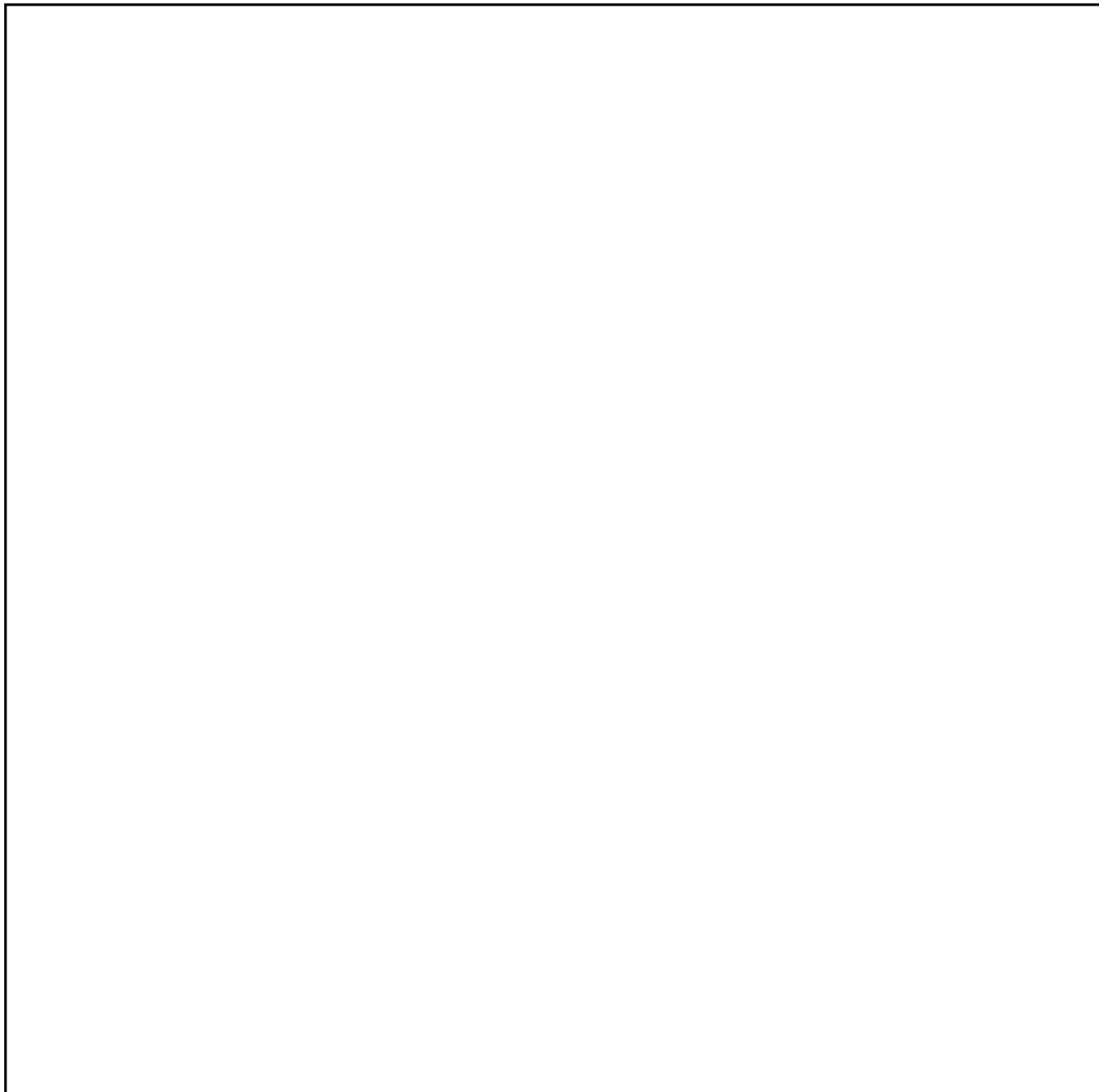
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6. We now turn to the particular question of leave en route. We cannot say as a matter of law that an employee with sufficient leave to carry him in a pay status for precisely 30 days must spend X number of them in the United States and therefore be limited to Y number of days leave en route. We say that the purpose of the order must be the purpose authorized by the

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statute: Home Leave. Whether leave en route home would evidence an abuse of the authority granted by Congress would depend upon the facts of each case. Determination of this would ordinarily be an administrative function. Thus, an employee may spend 15 days en route and 15 days home, and the Agency, as a matter of policy, might approve; we would voice no legal objection to such a policy. But obviously 29 days en route and one day home would be the kind of unlawful abuse to which we have referred. The legal standard we apply here is that the period of time spent in the United States must, in the light of all the facts, be reasonable and substantial.

LAWRENCE R. HOUSTON
General Counsel

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